

REMARKS

The specification has been amended at page 1 to recite the priority documents relating to this case and to claim C-I-P status from U.S. 5,849,678.

Claims 1-13, 16 and 18-21 have been cancelled herewith. Claims 14, 15 and 17 are now in the case. Claim 14 has been amended to place it in independent form and, further, to recite the relevant elements of Claims 12 and 13, from which it originally depended. Claim 15 has been amended to depend from Claim 14. Claim 17 already properly depends from Claim 15.

Attached hereto is a marked-up version of the changes made to the claims by the current amendment captioned "Version with markings to show changes made."

STATUS OF THE CASE

The present Application was on Appeal. The Board's decision mailed 12/26/02 upheld the final rejection of Claims 1-21, for reasons of record. There are no rejections or objections under 35USC112 outstanding.

At page 14 of the Board's Decision, it was noted that the rejection of Claim 14 over Murch U.S. 5,498,295 in view of Murch 5,849,678, while affirmed, involved a new grounds of rejection under 37 CFR §1.196 (b). Accordingly, such rejection is not final for purposes of judicial review. Applicants are, therefore, given the opportunity to present a showing of facts to the Examiner in support of patentability.

Inasmuch as the Applicants' showing of facts requires amendment of the specification to claim C-I-P status (below), as well as substantial amendments to Claim 14, it is submitted that filing this RCE and proceeding under MPEP 1214.07 would be better practice.

CLAIM OF C-I-P STATUS

The specification has been amended pursuant to the provisions of MPEP 201.08 to claim Continuation-in-Part status from U.S. patent 5,849,678. It is submitted that this is appropriate, inasmuch as:

- A) There is at least one common inventor, i.e., Brian Joseph Roselle and Thomas Edward Ward in the two cases;
- B) The present application claims priority to Applications 60/050,839 (6/26/97) and 60/095,069 (2/18/98) and was thus co-pending with Application Serial No. 833,552 filed 4/7/97, which forms the basis for U.S. patent 5,849,678, granted 12/15/98.

C) The present specification has now been amended to claim C-I-P status.

Moreover, the present application repeats some substantial portion of the earlier application and adds matter not disclosed in said earlier application, as follows:

- i.) The Summary of the Invention (pages 2-6 of the instant case and Column 2 of '697);
- ii.) The listing of several common ingredients.

The present invention differs significantly in the recitation of the use of suds suppressors in the particular composition within the scope of Claim 14, as amended herewith.

In short, it is submitted that the present case meets all requirements for C-I-P status over the cited Murch Patent, U.S. 5,849,678.


REJECTIONS UNDER 35U.S.C.103

The Board has indicated that Claim 14 stands rejected by a new ground for rejection over the combination of U.S. 5,849,678 and U.S. 5,498,295. Inasmuch as the instant application is a Continuation-in-Part of the '678 patent, that patent cannot be used as a reference against the present application. Accordingly, the new grounds for rejection over this combination of references cannot stand, as a matter of law.

With regard to the use of the suds suppressors and other ingredients, earlier comments regarding patentability continue to apply to amended Claim 14.

In light of the amendments to the claims and the above remarks, it is requested that the Examiner reconsider and withdraw the rejections and give an early and favorable action in the case.

Respectfully submitted,



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VERSION WITH MARKINGS TO SHOW CHANGES MADE

14. (amended) [A composition according to Claim 13 wherein] A concentrated composition suitable for use in preparing a dilute treatment composition having a viscosity of less than about 10cp for treating food at a basic pH by diluting with water using from about 0.1% to about 5% of the concentrated composition, by weight of the dilute treatment composition, said concentrated composition comprising:

- (a) [said base-stable anionic surfactant is alkylsulfate and/or C₈₋₁₄ soap] from about 0.5% to about 50% by weight of toxicologically-acceptable detergent surfactant selected from the group consisting of alkyl sulfates and C₈₋₁₄ soaps;
- (b) [said basic buffer provides] a basic buffer to provide a pH in said dilute treatment composition of from about 11.3 to about 12.3, but with low reserve alkalinity in said dilute composition to avoid damage to a human, the level of orthophosphate, when present, being from about 3% to about 60%, by weight of phosphoric acid equivalent; [and]
- (c) [there is] from about 2% to about 20% by weight of [said] a calcium ion sequestrant, which is sodium and/or potassium tripolyphosphate and/or ethylenediaminetetraacetate;
- (d) optionally, a toxicologically-acceptable preservative;
- (e) a toxicologically-acceptable suds suppressor; and
- (f) the balance comprising compatible, toxicologically-acceptable inert and/or minor ingredients.

15. (amended) A dilute treatment composition prepared by diluting from about 0.5% to about 2% by weight of the composition of Claim [12] 14 with impure water to form a composition which has a viscosity less than about [50] 10 centipoise under shear of greater than about 1000 sec⁻¹.